

Panaji, 5th February, 1976 (Magha 16, 1897)

SERIES II No. 45

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

General Administration Department

Order

No. 1-1-70-GAD-III-PER

Shri B. V. Desai, Mamlatdar, Salcete is granted earned leave for 27 days from 2-2-76 to 28-2-76 with permission to prefix 1-2-76 and suffix 29-2-76 being Sundays.

During the absence of Shri Desai, Shri V. J. Menezes, Enquiry Officer, City Survey, Margao is directed to hold the charge of the post of Mamlatdar, Salcete in addition to his own duties.

It is certified that Shri B. V. Desai would have continued to officiate as Mamlatdar, Salcete but for his proceeding on leave.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Deputy Secretary (Appointments).

Panaji, 30th January, 1976.

Special Department

No. 4-27-74-SPL

Government is pleased to depute Shri Satish Chandra, Collector of Daman to New Delhi for 2nd Course on "Tribal Development Administration" to be held at the Indian Institute of Public Administration, Indraprastha Estate, Ring Road, New Delhi—110001 from 25th February, to 6th March, 1976.

During the period of training, Shri Satish Chandra will draw his pay and allowances as on duty and full D. A. as admissible in accordance with the rules. Besides for his journey to and from New Delhi he will be entitled to claim T. A. and D. A. as on tour.

Shri M. M. Mitbavkar, Mamlatdar-cum-P. A. to Collector of Daman shall officiate as Collector of Daman and Dadra and Nagar Haveli in addition to his own duties during the period Shri Satish Chandra is away on training to New Delhi.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Deputy Secretary (Appointments).

Panaji, 23rd January, 1976.

Notification

Read: Notifications No. SPL-GCS/39/73-Vol. II dated 9-3-1973 and No. 3-17-74-SPL dated 15-1-1976.

The Administrator of Goa, Daman and Diu is pleased to order the transfer of the following officers of the Goa, Daman and Diu Civil Service Cadre with immediate effect.

Shri Vaman Sardessai, Selection Grade Officer, hitherto Registrar of Co-operative Societies transferred as Director of Information and Tourism, vice Shri Pukh Raj Bumb, transferred.

Shri Pukh Raj Bumb, Selection Grade Officer on ad-hoc basis, transferred from the post of Director of Information and Tourism to Registrar of Co-operative Societies vice Shri Vaman Sardessai, transferred.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Deputy Secretary (Appointments).

Panaji, 4th February, 1976.

Home Department (General)

Notification

No. HD (G)-44-92/74(i)

Read:— Government Notification No. 3-17-74-SPL dated 15th January, 1976.

In exercise of the powers conferred by sub-section (1) of Section 20 of the Criminal Procedure Code, 1973 (Act No. 2 of 1974), the Lieutenant Governor of Goa, Daman and Diu hereby appoints Shri A. Venkatratnam, Deputy Collector (Land Acquisition Officer) as Executive Magistrate with immediate effect.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary (Home).

Panaji, 27th January, 1976.

Notification

No. HD (G)-44-92/74(ii)

Read:— Government's Notification No. HD (G)-44-92/74(i) dated 27-1-76.

In exercise of the powers conferred by sub-section (2) of Section 20 of the Criminal Procedure Code, 1973 (Act No. 2 of 1974) the Lieutenant Governor of Goa, Daman and Diu hereby appoints Shri A. Venkatratnam, Deputy Collector (Land Acquisition Officer) and Executive Magistrate as Additional District Magistrate for the District of Goa with immediate effect.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary (Home).

Panaji, 27th January, 1976.

Rural Development Department

Order

No. 4-3/Coop/Deput/(JM)/76/RDD/694

Ref: Letter No. RCS/EST/PF/(JM)/144/1975-76, dated 26-12-75.

Sanction is hereby accorded to the deputation, on foreign Service terms, of Shri John Mascarenhas, Extension Officer (V.P. Cum-Cooperation), Canacona, as Managing Director to Canacona Taluka Farmers Service Coop. Society, Ltd. Canacona, in the Scale of pay of Rs. 425-700, with 10% deputation allowance.

The deputation of the officer shall be for a period of one year in the first instance.

The terms and conditions of deputation of Shri Mascarenhas shall be in accordance with the Government of India, Ministry of Finance (Department of Expenditure) O.M. No. F.10(24)/E.III/60, dated 4-5-1961, as amended from time to time.

By order and in the name of the Administrator of Goa, Daman and Diu.

F. A. Figueiredo, Under Secretary (Planning).

Panaji, 29th January, 1976.

Notification

No. RDD/Coop/SSSK/Shares/186/75/659

In exercise of the powers conferred by the proviso to section 28 of the Maharashtra Cooperative Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu (Act No. 24 of 1961), the Government of Goa, Daman and Diu hereby, in respect of the class of Societies which run sugar factories, specifies for the purposes of Clause (b) of that section the higher amount of five lakhs rupees.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

F. A. Figueiredo, Under Secretary (Planning).

Panaji, 29th January, 1976.

Labour and Information Department

Order

No. CLE/1/ID/(113)/75/IT(31)/75/187

Whereas the employers in relation to M/s. O Heraldo Panaji Goa and their workman Shri Pascoal Braganza, have jointly applied to the Government of Goa, Daman and Diu for reference under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 of an industrial dispute that exists between them in respect of the matters set forth in the application and reproduced in the Schedule hereto annexed;

And Whereas the Government of Goa, Daman and Diu is satisfied that the Newspaper and Press Employees' Union, Betim, Bardez, Goa, represents a majority of the workmen;

Now, Therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu hereby refers the said dispute for adjudication to the Industrial Tribunal, Goa, Daman and Diu, Panaji (Goa).

SCHEDULE

«Whether the action of the Management of M/s. O Heraldo Panaji, in terminating the services of Shri Pascoal Braganza is legal and justified?

If not, what relief the worker is entitled to?»

By order and in the name of the Lieutenant Governor Goa, Daman and Diu.

P. Noronha, Under Secretary (Industries and Labour).

Panaji, 30th January, 1976.

Order

No. CL/1/ID/(49)/IT/17/73 d

The following Award given by the Industrial Tribunal Goa, Daman and Diu on an industrial dispute between the Management of M/s. Nav-Gomant Prakashan, Margao-Goa and their workman employed under them, is hereby published as required under provisions of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947).

P. Noronha, Under Secretary (Industries and Labour).

Panaji, 16th January, 1976.

Before Shri R. V. Kollali, Presiding Officer,
Industrial Tribunal Goa, Daman and Diu

Reference No. IT/32/1974

Between

Shri S. G. Pause, workman of M/s. Nav-Gomant Prakashan, Margao-Goa. 1st Party

And

M/s. Nav-Gomant Prakashan, Margao-Goa. 2nd Party

Appearances:

Shri N. J. Rebello, The General Secretary, Newspapers and Press Employees' Union, Betim, Bardez-Goa. for the 1st Party

And

Shri S. P. Madkaiker, Administration Manager, Nav Gomant Prakashan, Margao-Goa. for the 2nd Party

By Government Order No. 27, of 23rd May, 1974, the Government of Goa, Daman and Diu, referred this dispute to this Tribunal for adjudication. The schedule of the reference reads as follows:—

SCHEDULE

«Whether the action of the management of M/s. Nav-Gomant Prakashan, Margao-Goa, in terminating the services of Shri Subhas Gopal Pause, the workman, is legal and justified?

If not, to what relief the workman is entitled?»

The reference was registered as IT/32/1974, and notice was issued to the 1st party to file Statement of Claim. This was done on 10th December, 1974. A written statement of the 2nd party was duly filed. On a consideration of the statement of claim and the written statement, it was thought no other issues were necessary for being settled. The case was posted for hearing. Thereafter, on the dates given either one or the other party would remain absent and, the matter was being postponed until 28th November, 1975, on which the representatives of both the parties informed the Tribunal that they would talk about an amicable settlement, and hence the matter may be adjourned to another date. Accordingly the case was fixed for 5th January, 1976.

As the case was called up on 5th January, 1976, both the representatives were present and they filed a joint memo of settlement under the terms of which the 2nd party agreed to pay Rs. 504/- in full and final settlement of all the claims of the 1st party workman. It was also agreed by the 1st party Union, that the termination of the services of the concerned workman was justified. The parties requested that the dispute be disposed off as having been settled on these terms.

The dispute arose out of the termination of the concerned workman from the services of the 2nd party on the grounds that the concerned workman had been guilty of theft. The termination was challenged by the concerned workman through his Union representative, on the ground that the workman had been victimised and had been given no reasonable opportunity to defend himself; as such the termination was illegal and invalid. The 2nd party on the other hand contended that the concerned workman had admitted his guilt before the management. Whether it is as contended by the workman or whether it is the other way would have been a matter for decision on basis of the evidence which the parties might have led. The settlement now filed accepts the

termination of the services of the concerned workman as justified, and the concerned workman gets a substantial amount of money in full and final settlement against all his claims against the 2nd party. The settlement therefore, is reasonable and fair and is accepted as such.

The award will have a copy of the settlement as an annexure which will be read as part of the award. The following award is passed.

AWARD

The award is made in terms of the settlement dated 27th December, 1975, and filed before this Tribunal on 5th January, 1976. A copy of the settlement has been annexed to the award and shall form part of it.

Sd/-

R. V. KOLLALI
Presiding Officer

Dated: 7th January, 1976.

Station: Dona Paula.

Dictated on: 6th January, 1976.

Before Shri R. V. Kollali, Goa, Daman and Diu

Reference No. IT/32 of 1974

Between

M/s. Nav Gomant Prakashan, Margao-Goa

And

Their Workman

In the matter of termination of services of Shri S. G. Pause.

May it please Your Honour:

The parties above named have arrived at an amicable settlement the terms of which are as under:

1. The Management agrees to pay Shri Subash G. Pause an amount of Rs. 504/- (Rupees Five hundred and four only) towards full and final settlement of all his claims for the services rendered with the Naw Gomant Prakashan and on account of termination of his services by the firm from 30th January, 1973.

2. The Newspapers and Press Employee's Union agrees that the Termination of the services of the said Mr. Pause is justified.

3. The parties jointly pray that an order may please be passed in terms of this settlement and this Honourable Tribunal may be pleased to dispose of the complaint accordingly.

On behalf of workman

Sd/-

N. J. REBELO

General Secretary,
Newspapers and Press
Employee's Union

Witnesses:

1. Sd/-

2. Sd/-

23rd December, 1975.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

P. Noronha, Under Secretary, (Industries and Labour).

Notification

No. 1/227/75-(LAB)/M.W./160

In exercise of the powers conferred by sub-section (1) of section 19 of the Minimum Wages Act, 1948 (Central Act 11 of 1948), the Lieutenant Governor of Goa, Daman and Diu hereby appoints the officers mentioned in column 2 of the Schedule appended hereto, as Inspectors for all purposes of the said Act in respect of employment specified in Part II of the Schedule to the Minimum Wages Act, 1948 within the local limits mentioned in the corresponding entry of Column 3 of the said Schedule.

SCHEDULE

Sr. No.	Designation of the Officer	Local limits
1	2	3
1.	Civil Administrator, Diu	District of Diu
2.	Mamlatdar, Daman	District of Daman
3.	Extension Officer (Agriculture), Margao, Goa	Salcete and Marmagao Talukas
4.	Extension Officer (Agriculture), Pernem, Goa	Pernem Taluka
5.	Extension Officer (Agriculture), Mapusa, Goa	Bardez Taluka
6.	Extension Officer (Agriculture), Panaji, Goa	Ilhas Taluka
7.	Extension Officer (Agriculture), Bicholim, Goa	Bicholim Taluka
8.	Extension Officer (Agriculture), Sanguem, Goa	Sanguem Taluka
9.	Extension Officer (Agriculture), Quepem, Goa	Quepem Taluka
10.	Extension Officer (Agriculture), Canacona, Goa	Canacona Taluka
11.	Extension Officer (Agriculture), Valpoi, Goa	Satari Taluka
12.	Extension Officer (Agriculture), Ponda, Goa	Ponda Taluka

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

P. Noronha, Under Secretary (Industries and Labour).

Panaji, 22nd January, 1976.

Revenue Department

Notification

No. RD/LQN/315/75

Whereas it appears to the Appropriate Government (hereinafter referred to as «the Government») that the land specified in the schedule hereto (hereinafter referred to as the «said land») is likely to be needed for public purpose viz for Municipal Market at Mormugao.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the «said Act») that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa South Division, Margao to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section 4 of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji.
2. The Deputy Collector, Goa South Division, Margao.
3. The President, Municipal Council, Mormugao.
4. The Director of Land Survey, Panaji.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, South Division, Margao for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE
(Description of the said land)

Sr. No.	Taluka	Village	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco-da-Gama	—	214	Hospicio de Sagrado Coracao de Maria, Margao. North South } Road. East West: Plot held by Cecilia M. Fernandes and Mormugao Municipality.	4,014.00
Total						4,014.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. R. Arya, Secretary (Revenue).

Panaji, 9th January, 1976.

Notification

No. RD/LQN/318/73

Whereas by Government Notification No. RD/LQN/318/73 dated 31-1-1974 published on page 454 of Series II, No. 46 of the Official Gazette, dated 14-2-1974 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as «the said Act») that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the «said land») was likely to be needed for the public purpose viz. Construction of link road connecting Panaji-Merces road to Panaji Ribandar road near P. W. D. store room.

And Whereas the appropriate Government (hereinafter referred to as «the Government») is satisfied after considering

the report made under sub-section (2) of Section 5A of the said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, Goa North Division, Panaji to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector Goa North Division, Panaji till the award is made under Section 11.

SCHEDULE
(Description of the said land)

Sr. No.	Taluka	Village	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Tiswadi	Morombi de Pequeno Merces.	1	—	Heirs of Mr. Pitagoras Velho of Panaji. North: Panaji Ribandar Road. South: Land of Balchandra A. Vaglo. East: Sangria. West: Land of Heirs of Pitagoras Velho.	3,000.00
2.	»	»	2	—	Shri Balchandra Anant Vaglo of Panaji. North: Land of Heirs of Mr. Velho. South: Land of Heirs of D. B. Bandodkar. East: Sangria. West: Land of Shri Balchandra A. Vaglo.	3,600.00
3.	»	»	3	—	Heirs of Shri Dayanand Balkrishna Bandodkar. North: Land of Shri B. A. Vaglo. South: Land of Comunidade of Morombi de Pequeno. West: Land of Heirs of Shri D. B. Bandodkar. East: Land of Smt. Marcelia.	1,825.00
4.	»	»	4	—	Smt. Marcelia Pereira of Merces. North: Land of Shri B. A. Vaglo. South: Land of Comunidade of Morombi de Pequeno. East: Land of Smt. Marcelia Pereira. West: Land of Heirs of D. B. Bandodkar.	475.00
5.	»	»	5	—	Comunidade of Morombi de Pequeno. North: Land of Heirs of D. B. Bandodkar. South: Merces Panaji Road. East: Land of Comunidade of Morombi de Pequeno. West: — do —	15,980.00
Total						24,880.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. R. Arya, Secretary (Revenue).

Panaji, 31st January, 1976.

Notification

No. RD/LQN/20/73

Whereas by Government Notification No. RD/LQN/20/73 dated 20-4-1973 published on page 24 of Series II, No. 4 of the Official Gazette, dated 26-4-1973 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as «the said Act») that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the «said land») was likely to be needed for the public purpose viz. construction of school building at Camurlim.

And Whereas the appropriate Government (hereinafter referred to as «the Government») is satisfied after considering the report made under sub-section (2) of Section 5A of the

said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, Goa North Division, Panaji to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector, Goa North Division, Panaji till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village	Plot No.	Survey Nos.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Bardez	Camurlim	Part of plot No. 5 known as Monerechem Colombo	—	Comunidade of Camurlim.	2,000.00
Total						2,000.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. R. Arya, Secretary (Revenue).

Panaji, 31st January, 1976.

Notification

No. RD/LQN/327/73

Whereas by Government Notification No. RD/LQN/513/1460 dated 21-1-1974 published on page 425-426 of Series II, No. 44 of the Official Gazette, dated 31-1-1974 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as «the said Act») that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the «said land») was likely to be needed for the public purpose viz. construction of a well for drinking water at Latambarcem.

And Whereas the appropriate Government (hereinafter referred to as «the Government») is satisfied after considering the report made under sub-section (2) of Section 5A of the

said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, Goa North Division, Panaji to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector, Goa North Division, Panaji till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Bicholim	Latambarcem (Kassar)	1	—	Kalika Devasthan, Kasarpale, Bicholim.	100.00
Boundaries:						
North, South, East and West: Kalika Devasthan.						
Total						100.00

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

S. R. Arya, Secretary (Revenue).

Panaji, 31st January, 1976.

Notification

No. RD/LQN/217/72

The Government Notification No. RD/LQN/217/72 dated 5-7-1973 regarding land acquisition for the construction of Fremeiro Palvem Road (Section between Palvem to Chinchim) admeasuring 2,120.00 sq. mts. and published in the

Official Gazette No. 15, Series II, dated 12-7-1973 is hereby cancelled with immediate effect.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. R. Arya, Secretary (Revenue).

Panaji, 29th January, 1976.

Office of the Collector and D. C. A.

Order

No. COL/CAB/94/76/5

The Lt. Governor of Goa, Daman and Diu, under the authority vested in him by Art. 18 of the Devasthan Regulation is pleased to appoint the below named persons on a Special Committee to frame the draft bye-laws of the Devasthan «Shri Chauranganath» of Nanora of Latambarcem Village, of Bicholim Taluka.

Effective Members:

President: Venkatesh Visnu Hadfadkar.
Treasurer: Naneswar Pandurang Hadfadkar.
Attorney: Padbanatha Pandurang Hadfadkar.
Clerk: Mamdeu Anant Hadfadkar.

Substitute Members:

President: Ramnatha Chandru Hadfadkar.
Treasurer: Ramaesh Pundalik Hadfadkar.
Attorney: Prabhakar Chandru Hadfadkar.
Clerk: Kishor Babai Hadfadkar.

The Committee is required to submit its report to the Government within a period of six months from the date of publication of this order in the Official Gazette. The procedure laid down under Art. 17 and 18 of the Devasthan Regulation, as amended by the Legislative Diploma No. 1899, dated 29-5-1959 and also the Government directives contained in the Revenue Department's letter No. RD/END/116-71, dated 27-7-1971 may be followed to frame the bye-laws.

The Committee is also entrusted with the management of the Devalaya pending approval of the bye-laws.

Collectorate of Goa, Panaji, 20th January, 1976. — The Collector and D. C. A., R. Narayanaswamy.

Local Self Government Department

Order

No. 2-18-75-LSG

Shri Janardhan H. Kamble, Forest Surveyor in the Forest Department is promoted on adhoc basis and until further orders to the post of Forest Engineer, in the scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200, created vide Government Order No. 1-1/75-PLG dated 11-11-1975, with immediate effect.

He will be entitled to draw pay and allowances as admissible under the rules.

By order and in the name of the Administrator of Goa, Daman and Diu.

Abel do Rosario, Under Secretary (Development).

Panaji, 30th January, 1976.

Public Health Department

Notification

No. A-2/69-DHS/9606

Read: (i) Govt. Notification of even number, dated 26-8-75.

(ii) Corrigendum of even number, dated 5-9-75.

In supersession of the above mentioned Government Notification and the corrigendum thereto, and on the recommendations of the Departmental Promotion Committee, the Administrator of Goa, Daman and Diu is pleased to confirm Shri Syed Ejaz Hussain in the General Central Services

Class II permanent post of Psychologist (pay-scale Rs. 650-1200) in the Mental Hospital attached to the Directorate of Health Services, Panaji, with effect from 26-8-75.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

P. Noronha, Under Secretary (Health).

Panaji, 2nd February, 1976.

Finance Department (Revenue)

Corrigendum

No. Fin(Rev)/2-9/Gen/2/70

Read: — Government Notification No. Fin(Rev)/2-9/Gen/2/1168/70 dated 29th November, 1975.

In the Government Notification No. Fin(Rev)/2-9/Gen/2/1168/70 dated 29th November, 1975, published in the Official Gazette Series II No. 37 dated 11th December, 1975 after the words «from the date of publication» and before the words «in the Official Gazette», the words «of this Notification» shall be inserted.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. S. Sukthankar, Under Secretary (Finance).

Panaji, 20th January, 1976.

Office of the Chief Electoral Officer

Notification

No. 3-18-74/Elec.

The following Notification No. 82/GOA-LA/2/74 dated 7-1-1976 issued by the Election Commission of India, New Delhi, is hereby published for general information.

K. C. D. Gangwani, Chief Electoral Officer.

Panaji, 22nd January, 1976.

Election Commission of India

Nirvachan Sadan, Ashok Road, New Delhi-1
Dated 7 January, 1976

Notification

No. 82/GOA-LA/2/74

In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order, dated 16th December, 1975 of the Court of Judicial Commissioner, Goa, Daman and Diu at Panaji in Election Petition No. 2 of 1974.

By order,

V. NAGASUBRAMANIAN

Secretary to the Election Commission of India.

Election Petition No. 2 of 1974

Before Shri Tito Menezes, Judicial Commissioner

Dr. Wilfred D'Souza, Medical Practitioner, residing at Altinho, Panaji — Petitioner.

V/s

Francis Menino Jesus Ferrao, residing at Colva, Salcete — Respondent.

Shri Ataide Lobo, Advocate for the Petitioner.

Shri Joaquim Dias, Government Advocate for the Respondent.

Panaji, 16th December, 1975.

JUDGMENT

The petitioner and the respondent were candidates for the by-election to the 23-Benaulim Assembly Constituency held on the 9th June, 1974 for filling up the vacancy caused in the Legislative Assembly of the Goa, Daman and Diu by the death of the seating member Vassudev Narayan Sarmalkar. The counting of the votes took place on 10th June, 1974 at Margao by the then Returning Officer, the late Anil Chopra. In the first counting 4656 votes were recorded in the favour of the petitioner and 4654 in favour of the respondent. A re-count was ordered. The total number of votes recorded in the favour of the petitioner in the re-count was 4651 and those in favour of the respondent was 4652. A second re-count was ordered. In that re-count the petitioner polled 4650 votes and the respondent 4652. There were 10 tendered votes which were not counted as prescribed by law. The respondent was declared as the successful candidate and returned to the Legislative Assembly. Aggrieved by the order of the Returning Officer the petitioner has filed the present petition.

2. The petitioner alleges that in the first and second re-counts the Returning Officer did not scrutinize the votes which were rejected in the previous counting or re-counting. He submits that the procedure laid down for counting of votes in rule 59 of the Conduct of Election Rules, 1961 (hereinafter called «the Rules») should also be followed in the two re-counts. He states that some votes were accepted in the favour of the returned candidate, which should have, in law, been rejected and that some other votes were rejected which should have been accepted as valid in favour of the petitioner; that there was improper acceptance and rejection of votes which materially affected the results of the election. It is lastly stated by the petitioner that the respondent was declared to be the successful candidate on a margin of two votes; that the tendered votes were 10; that there has been improper reception of votes originally polled by persons other than those who tendered their votes and that therefore the votes initially and improperly received should be removed and the tendered votes accepted and counted instead of the votes initially and improperly received.

3. In his written statement the respondent raised the preliminary objection that the election petition as framed is not maintainable in law in as much as the petition does not contain a concise statement of material facts in support of the grounds on which the petitioner relies in support of his case and that therefore the petition does not comply with the statutory requirements of section 83(1)(a) of the Representation of the People Act 1950 (hereinafter called «the Act»). The respondent traversed the material averments made by the petitioner in his petition and contested the petition on all the grounds. Regarding the ground of the petition relating to tendered votes, the respondent submits that the Returning Officer could not in law take into account the tendered votes and denies that the tendered votes were cast by the true enrolled voters. He contends that no case is made out for counting of the tendered votes.

4. The question whether the petitioner complies with the statutory requirements of section 83(1)(a) of «the Act» was set up as a preliminary issue and decided by this Court's Order dated 22nd March, 1975. The preliminary contention of the respondent was upheld regarding all the grounds, except the ground relating to tendered votes. The hearing of the petition was ordered to proceed in relation to that ground. The averments in support of that ground are contained in paragraph 9 of the petition, which I shall reproduce:—

«9. The petitioner further submits that the scrutiny and counting of the tendered votes is absolutely necessary in this case, considering the fact that the Respondent has been declared the returned candidate after securing in his favour only 2 votes more than the Petitioner and the fact that the tendered votes are 10, and that the non-counting of such votes may materially affect the result of the election, in so far as it concerns the Respondents, by the improper reception of votes originally polled by persons other than those who tendered their votes. The petitioner, therefore, submits that the votes initially and improperly received should be removed and the tendered votes should be accepted and counted instead».

5. According to the petitioner there was improper reception of votes originally polled by the persons other than those who tendered their votes. He submits that the votes initially and improperly received should be removed and the tendered votes should be accepted and counted instead of the votes

initially and improperly received. The tendered votes were 10. The reception which, according to the petitioner, was improper was the reception of the votes originally polled by persons other than those who tendered their votes. This the petitioner could establish by proving that the real voters whose names were duly registered in the electoral roll had tendered their votes and not cast them into the ballot box. By my Order of September 11, 1975 I held that the petitioner would have to produce all his evidence before the counting could be ordered. Thereafter the petitioner submitted the list of his witnesses and examined two persons who, according to him, were the genuine registered voters and who tendered their votes and did not cast them into the ballot box. The remaining eight voters who, according to the petitioner were also the genuine voters and who had tendered and not cast their votes, were not examined.

6. Much is made by Shri Dias, learned Advocate for the respondent of the fact that tendered votes are not to be counted. However it cannot be gainsaid that if the petitioner had established his case that the valid votes were the tendered ones and that therefore there had been improper reception of the votes initially cast by persons other than those who tendered their votes, the number of votes improperly cast into the ballot box would have to be subtracted from the number of votes counted for the respondent and added to the number of votes counted for the petitioner. This subtraction and addition could certainly be called «counting» even if it had to be done by this Court. Counting would have therefore to be done if the petitioner had established his case.

7. Shri Dias objected to the opening of the packets containing the electoral papers referred to in Rule 92(2) of the Rules and to their being brought on record and refused to take notice of them. Shri Dias oversimplified matters and confined himself to arguing the case for the respondent generally from the provisions of «the Act» and «the Rules». The electoral papers are documents purported to be documents directed by Rule 92(2) of «the Rules» to be kept by the Returning Officer. They are substantially kept in the form required by law and have been produced by the Returning Officer. Section 81 of the Indian Evidence Act 1972 is therefore attracted and the papers had to be taken on record and opened. They could not be left untouched as Shri Dias did. Shri Dias had necessarily to scrutinize them and place before me the numerous points that arise from them. This task Shri Dias left to me.

8. Before I proceed to examine the evidence on record to find out whether the petitioner has established his case that there had been an improper reception of any vote, I would like to advert to the well established principle that the returned candidate should not be lightly unseated, and that the proof of improper reception of votes must be strictly made by the petitioner before he succeeds in getting himself duly declared as elected.

9. The petitioner examined two witnesses whose evidence I shall presently examine. Both, P.W. 1 Joaquina Rodrigues and P.Q. 2 Vina Fernandes are voter witnesses. They have stated that they cast their votes, but they have also stated that they did not put their votes into the ballot box but gave them to the persons who were there. The respondent challenged the statement of the two witnesses that they had «given» the vote to «them». In view of this challenge the petitioner was bound to prove positively that all the features that characterise a «tendered vote» and distinguish it from a «vote cast», were present in the instant case. The peculiarities of a «tendered vote» are, the giving of particulars, the answering of questions put to the voter by the Presiding Officer regarding the identity, the affixation of the thumb impression on the list in Form 15 prescribed by Rule 42(2) of «the Rules» and the handing over of the ballot paper to the Presiding Officer. Neither of the witnesses has deposed to any of the aforesaid special features distinguishing a vote cast from a vote tendered, except to the last feature. Even regarding the last one, it was said that the vote was given to «them» or to «him» without specifying to whom it was given. The argument of the petitioner speaks to be that if it is proved that the voter witness is genuine and there is a vote tendered in his or her name, it must be presumed that the vote was tendered by the voter witness and not by anyone else. It is clear to me that no such presumption arises. A tendered vote, like any other vote, can be tendered by a bogus person. It is therefore that the burden is heavily cast on the petitioner to strictly prove his case that the tendered votes are the votes received from the true and genuine registered voters.

10. The real and physical link between a person tendering a vote and the list in Form 15 is the existence of the signature or the thumb impression of the person tendering the vote on that list. The two voter witnesses have not stated that their thumb impression were put on the list in Form 15. They state that one thumb impression was affixed by each of them when they voted. If each of the two witnesses had in fact affixed two thumb impressions when they voted the petitioner would have put to these witnesses a question so as to enable them to depose to the fact which is alleged to be correct, at least after Shri Dias raised the contention in the course of the examination of the first witness that that witness had affixed only one thumb impression. Only one thumb impression was affixed by each of the two witnesses. It is seen that one thumb impression is affixed on each of the counterfoils of the ballot paper. This fact rules out the possibility of any of the two witnesses having affixed her thumb impression to the list in Form 15. The two witnesses do not speak of any Form whatsoever. The conclusion is that the two witnesses cast their votes in the ballot box at any rate that it was not proved that they had tendered them.

11. The petitioner could, if he so desired, prove that the thumb impressions on the list in Form 15 were those of the two witnesses examined by him, also by adducing the evidence of an expert witness. He could also prove that fact by examining the Presiding Officer or any election agent or polling agent. The evidence of some such witness was necessary in view of the facts that, the respondent has challenged the testimony of the two witnesses to the effect that they had «given» their vote to «them», that the two witnesses did not depose to affixation of their thumb impression to the list in Form 15 and to their having done the other things which would go to prove that a vote was tendered by them. That was also necessary as the burden of positively proving that the tendered votes were cast by the two witnesses and not by any other person squarely lies on the petitioner.

12. In the list of witnesses given by the petitioner there is the name of Antonio M. X. Fernandes. This witness must be either a witness in support of the two voter witnesses or a voter witness himself. Antonio Fernandes was not examined in Court by the petitioner. He was dropped. In the circumstances of this case an adverse inference can be drawn against the petitioner for his failure to examine Antonio Fernandes in whatever capacity he might have deposed. In case he was a supporting witness, the adverse inference would be that he would not support the two voters witnesses. In case he was one of the person who had tendered a vote an inference can be drawn that if he had been examined and his tendered vote ultimately counted a vote would have to be added to and not subtracted from the votes counted in favour of the respondent.

13. As regards the witness Joaquina Rodrigues, I would like to add that her testimony is not worthy of credit. She stated that she had come to know Dr. Lobo, the Advocate

for the petitioner for the first time in Court. She stated that she never spoke to Dr. Ataíde Lobo. Later on, however, she stated that she had been to the chamber of Dr. Ataíde Lobo and that Dr. Lobo asked her what had happened when she put her vote and that she made a statement to him.

14. Joaquina Rodrigues also stated that one boy by the name Julio came to meet her and told her that he (Julio) had seen that the vote of this witness was put in an envelope and for that reason he had gone to meet her; that Julio stated to her that she would have to go the Court to give evidence; that Julio took her to the chamber of Dr. Ataíde Lobo and that on two occasions Julio came with her when she came to the Court to give evidence. In view of the deposition of Joaquina, the failure of the petitioner to examine Julio assumes importance.

15. I have examined the election papers on which the petitioner so strongly relies. The marked copy of the 23-Benaulim Assembly Constituency Roll 1974 relating to the ward Majilvado of that Constituency shows the name of one Rodrigues Joaquina Domingos along with several other names. Some of the names are marked and some of the names are not marked. The name of Rodrigues Joaquina Domingos is not marked. The counterfoil of the ballot paper which is alleged to be the counterfoil of the ballot paper of P.W.1 does not bear the endorsement «tendered ballot paper» on the back of it. P.W.1 gave her name in Court as Joaquina Rodrigues. On the counterfoil which is alleged to be of P.W.2, there is neither the endorsement of the words «tendered ballot paper» as required by Rule 42(3)(B) nor any signature of the Presiding Officer or any signature whatever. In the list in Form No. 15 the name of Vina Fernandes does not at all appear. All these infirmities affect the case of the petitioner vitally and adversely.

16. In the circumstances I find that the petitioner failed to prove his case. The petition is therefore dismissed with costs. A sum of Rs. 1000/- shall be paid by the petitioner to the respondent as costs of this petition out of the amount of Rs. 2000/- that was deposited in this Court as security for costs.

Seal of the Court of the
Judicial Commissioner,
Goa, Daman and Diu.

Sd/-

TITO MENEZES

Judicial Commissioner.

Corrigendum

In the Notification No. 14-26-75 EDN dated 16-1-76 from the Education and Public Works Department published in the Official Gazette No. 44, Series II, dated 29-1-76 the entry against Serial No. 13 should be read as follows:

«13. Shri N. B. Sardesai Vice-Principal 1-1-1974».

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